

Pamela M. Egan, WSBA No. 54736
POTOMAC LAW GROUP PLLC
1905 7th Ave. W.
Seattle, WA 98119
Telephone: (415) 297-0132
Email: pegan@potomaclaw.com
Attorneys for Mark D. Waldron, Chapter 7 Trustee

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON**

In re:

GIGA WATT, Inc., a Washington
corporation,

Debtor.

Case No. 18-03197 FPC 11

The Honorable Frederick P. Corbit

Chapter 7

MARK D. WALDRON, as Chapter 7
Trustee,

Plaintiff,

vs.

PERKINS COIE LLP, a Washington
limited liability partnership,
LOWELL NESS, individual and
California resident, GIGA WATT
PTE., LTD., a Singapore corporation,
and ANDREY KUZENNY, individual
and Russian citizen,

Defendants,

- and -

THE GIGA WATT PROJECT, a
partnership,

Nominal Defendant.

Adv. Case No. 20-80031

**TRUSTEE'S REQUEST FOR
JUDICIAL NOTICE IN SUPPORT
OF REPLY TO PERKINS' AND
NESS' OPPOSITION TO
TRUSTEE'S MOTION TO
STRIKE CROMWELL
AFFIDAVIT**

TRUSTEE'S REQ. FOR JUDICIAL NOTICE
ISO REPLY TO PERKINS' AND NESS'
OPP. TO TRUSTEE'S MOTION TO
STRIKE CROMWELL AFFIDAVIT

Page | 1

1 Mark D. Waldron, in his capacity as the duly appointed Chapter 7 Trustee,
2 by and through his attorneys, the Potomac Law Group PLLC, hereby submits his
3 *Request for Judicial Notice in Support of the Trustee's Reply to Perkins' and*
4 *Ness' Opposition to Trustee's Motion to Strike Cromwell Affidavit*, filed herewith.

5 Pursuant to Rule 201 of the Federal Rules of Evidence, the Trustee
6 respectfully requests that the Court take judicial notice of the documents listed
7 below.

8 REQUESTS FOR JUDICIAL NOTICE OF DOCUMENTS

9 1. *Ex Parte Order for Rule 2004 Examination of Perkins Coie LLP*,
10 dated July 6, 2020, filed in the above-captioned bankruptcy case, ECF No. 637,
11 attached hereto as **Exhibit A**.

12 2. *Order Regarding Production of Documents Responsive to Rule 2004*
13 *Order and Placing Limits on the Use of Confidential Information in Such*
14 *Documents*, dated August 13, 2020, filed in the above-captioned bankruptcy case,
15 ECF No. 673, attached hereto as **Exhibit B**.

16 3. *Stipulation Re Preserving Privilege Pursuant to FRE 502(d)*, dated
17 September 11, 2020, in the above-captioned bankruptcy case, ECF No. 706,
18 attached hereto as **Exhibit C**.

19 4. *Stipulated Order Preserving Privilege Pursuant to FRE 502(d)*, filed
20 on September 14, 2020 in the above captioned bankruptcy case, ECF No. 714,
21 attached hereto as **Exhibit D**.

22 TRUSTEE'S REQ. FOR JUDICIAL NOTICE
23 ISO REPLY TO PERKINS' AND NESS'
24 OPP. TO TRUSTEE'S MOTION TO
25 STRIKE CROMWELL AFFIDAVIT

1 5. *Order Denying Appellant's Motion to Seal*, dated June 8, 2022, filed
2 in the U.S. District Court, E.D. Washington, *Dam v. Waldron*, Case No. 2:21-cv-
3 00291-SAB, jointly administered with Case No. 2:22-cv-22-cv-00040-SAB ("AS
4 & PI Appeal"), ECF No. 36, attached hereto as **Exhibit E**.

5 6. Excerpts of *Appellant's Appendix, Vol. 1 of 4*, dated June 9, 2022,
6 filed in the AS & PI Appeal, ECF No. 38. The cover page of the Appendix and the
7 first page of the unredacted complaint submitted by Mr. Dam is attached hereto as
8 **Exhibit F**. (The caption in the complaint included in Mr. Dam's Appendix is
9 incorrect due to a clerical error by the Trustee's counsel. However, the unredacted
10 complaint that Mr. Dam submitted to the District Court is otherwise identical to
11 ECF No. 11, filed under seal in the above-captioned Adversary Proceeding. *See*
12 Egan Decl. at ¶ 31.

13 7. *Declaration of Andrey Kuzenny, et al*, filed March 7, 2019 in the
14 main case, ECF No. 226, **Exhibit G**.

15 8. Excerpts of *Defendants David M. Carlson, Enterprise Focus, Inc.*
16 *and Clever Capital, LLC's Memorandum re: Show Cause*, filed May 16, 2019,
17 ECF No. 40, in this case, adversary proceeding no. 19-80012, attached hereto as
18 **Exhibit H**.

19 9. *Order Granting Defendant's Motion to Dismiss*, filed September 17,
20 2020, in adversary proceeding, *Dam v. Waldron*, ECF No. 28; cover page of Order
21 attached hereto as **Exhibit I**.

22 TRUSTEE'S REQ. FOR JUDICIAL NOTICE
23 ISO REPLY TO PERKINS' AND NESS'
24 OPP. TO TRUSTEE'S MOTION TO
25 STRIKE CROMWELL AFFIDAVIT

10. *Order Granting Trustee's Motion for Authority to Incur and Pay Expenses Incident to Discovery in Perkins Adversary*, dated May 3, 2022, ECF No. 958, attached hereto as **Exhibit J**.

ARGUMENT

The foregoing documents fit squarely within the ambit of Rule 201, which provides:

The Court may judicially notice a fact that is not subject to reasonable dispute because it: . . . (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questions.

F.R.E. 201.

To determine the accuracy of the foregoing one need only review the docket of this Court, the District Court, or the Court of Appeals.

It is standard for a bankruptcy court to take judicial notice of its own docket. *Katzenstein v. VIII SV5556 Lender, LLC (In re Saint Vincent's Catholic Medical Centers of New York)*, 440 B.R. 587, 599 (Bankr. S.D.N.Y. 2010) (taking judicial notice of the docket in the underlying bankruptcy case); *In re Campbell*, 500 B.R. 56, 59 n. 7 (Bankr. D. N.M. 2013) (electing to take judicial notice of the entire file in the case for sake of completeness as a bankruptcy court has the inherent authority to take judicial notice of entries on its own docket). *Accord In re Koper*, 552 B.R. 208, 210 (Bankr. E.D.N.Y. 2016).

TRUSTEE'S REQ. FOR JUDICIAL NOTICE
ISO REPLY TO PERKINS' AND NESS'
OPP. TO TRUSTEE'S MOTION TO
STRIKE CROMWELL AFFIDAVIT

1 “Similarly, it is standard for a court to take judicial notice of the existence
2 of another court’s opinion.” *Metropolitan Creditors' Trust v. Pricewaterhouse-*
3 *coopers, LLP*, 463 F. Supp. 2d 1193, 1197–98 (E.D. Wash. 2006) (citing *Cal. ex*
4 *rel. RoNo, LLC v. Altus Fin. S.A.*, 344 F.3d 920, 931 (9th Cir. 2003) and *Lee v.*
5 *City of Los Angeles*, 250 F.3d 668, 690 (9th Cir. 2001)).

6 CONCLUSION

7 Wherefore, the Plaintiff respectfully requests that the Court grant the
8 Motion, allow the Trustee to file the proposed First Amended Complaint, and
9 grant such other and further relief as the Court deems necessary and just.

10 Dated: November 10, 2022

POTOMAC LAW GROUP PLLC

11 By: s/ Pamela M. Egan

12 Pamela M. Egan (WSBA No. 54736)

13 *Attorneys for Mark D. Waldron, Chapter 7*
14 *Trustee, Plaintiff*

15
16
17
18
19
20
21
22 TRUSTEE’S REQ. FOR JUDICIAL NOTICE
23 ISO REPLY TO PERKINS’ AND NESS’
24 OPP. TO TRUSTEE’S MOTION TO
25 STRIKE CROMWELL AFFIDAVIT

Page | 5